

1. MOTION SEEKING PERMISSION

2. HIGH DESERT STATE PRISON

3. PO BOX 650

4. INDOAN SPRINGS, NV 89070

5. JOSEPH MEZZONE #68549

6.

7.

8.

9.

10. JOSEPH MEZZONE

11. Plaintiff

12.

13. VS

14.

15. STATE OF NEVADA et al.

16. DEFENDANTS,

17.

18.

19. COMES NOW, Plaintiff JOSEPH MEZZONE #68549 PRO-SE

20. Respectfully request the above motion to this Court for the

21. Defendants to produce this Discovery evidence for plaintiffs

22. §1983 CIVIL COMPLAINT PURSUANT 42 USC §1983

23.

24. See; Hanes v. Kerner, 404 U.S. 519 (1972) (Allegations of a prose

25. complaint are held to less stringent standards than formal

26. pleadings drafted by ~~lawyers~~ lawyers.)

27.

28.

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<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL PARTIES OF RECORD	
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 150px;"> MAY 01 2017 copy rtd </div>	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	KMR DEPUTY

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CASE # 3:15-CV-00499-MMD-WGC

MOTION SEEKING PERMISSION

TO OBTAIN BY COURT ORDER

VIDEO TAPE EVIDENCE FOR

THE NIGHT OF 3-28-15 IN/OUT

UNITS 5, 4, 8, 7 AT NVCC PRISON

UNDER LOCAL RULE 26-7(D) FOR §1983,

BETWEEN 8PM AND 930 PM.

STATEMENT OF FACTS IN SUPPORT I

(FACT I) On the 21st day of March 2017 plaintiff followed
 FRCP 37(a)(1) with a "REQUEST TO DEFENDANTS FOR DISCOVERY
 CONFERENCE UNDER FRCP 37(a)(1) LETTER", and on that LETTER
 the plaintiff requested on PAGE 2- LINE 13-28 CD RECORDING
 on 3-15, and All the video on the night of Monday March 28, 2015.
 (1) INSIDE UNIT 5 ON CAMRAS in A; B; C wings; (2) Outside back
 door hall Unit 5; (3) Front door outside over Unit 5 Front door that
 shows court yard and front of Unit 5 entrance; (4) Front outside Fence line
 pointing down road towards Units 7-8, that camra is in front of unit 5
 roadway; (5) Front Outside Unit 5 Corners of A and B Wings to view
 front of that Unit 5; (Need at times between 8PM and 930AM and/or
 the escort from Unit 5 to Unit 8 times by C/O's) To show excessive
 force/dragging victim/plaintiff from Unit 5 to 8 Units which is the
 punishment in and outside at NNEC PRISON before plaintiff was
 allowed a disciplinary hearing which is punishment before due
 process of law 14th Amend USCA.
 Also plaintiff requested the Unit 4 at (NNEC) PRISON Video on Monday
 Night of 3-28-15. (1) Front camras of Unit 4 under front door entrance;
 (2) Corners of the two front Wings of Unit 4 pointing at the
 roadway towards Unit 5 and Units 7-8 road/entrance to RNF Camra
 (Need at times between 8AM and 930AM to show the C/O's who
 left to respond to Unit 5 first and the later escort from Unit 5
 to Unit 8 by C/O's) Once again to show punishment on the spot
 before due process of law under 14th Amend USCA; before plaintiff was
 allowed a disciplinary hearing by law.
 Also on this request plaintiff requested on PAGE 3 LINE 1-7
 of that Letter Any/All

1 STATEMENT OF FACTS IN SUPPORT I (CONTINUED)

2 Video Tape Footage⁽¹⁾ OUTSIDE UNIT 8 the RMF INFIRMERY Under

3 the Awning over hang from pill call window to Front entrance of
 4 Unit 8 and only out side Camras in front of Unit 8 RMF; (2)
 5 Unit 8 RMF inside first door Video camra; (3) Unit 8 RMF inside
 6 waiting room Second door camra. (4) Unit 8 RMF inside third
 7 entrance camra footage above office reception area. (5) Unit 8 RMF
 8 inside examroom plaintiff was in. (Need on Monday Night of
 9 3-28-15 between times of 8PM to 930PM to show the C/O's who left
 10 to respond to Unit 5 and the later escort from Unit 5 to Unit 8
 11 by C/O's) Once again to show punishment on the spot before
 12 due process of a disciplinary hearing under law of 14th Armed. USCA.
 13 Before the plaintiff was allowed that due process hearing of 5-1-15.

14 Also needed Any/All hand held video tape footage by C/O
 15 Robertson (NACC) at (NINCC) Prison of both camras she stated she used
 16 on her reports from Unit 5 to Unit 8 inside/out those Units (Need
 17 between 8PM and ~~9~~ 930PM on Monday Night 3-28-15) Once
 18 again to show punishment before due process, on the spot punishment
 19 before a disciplinary hearing on 5-1-15 under law of 14th Armed. USCA.
 20 Also needed Any/All Video tape on Units 4, 5, 7, 8 as requested
 21 above on video tape by Lt Frank Sherman Shift Commander of operations
 22 from 8PM to 930PM or end of incident Night of 3-28-15. He
 23 stated he saw video in his reports (playback). Plaintiff ask to show
 24 punishment on the spot with out due process of a Disciplinary Hearing
 25 under law of 14th Armed. USCA. (Need Unit 7 to show treatment to that Unit 7.)

26 See; Mann v. Mann 192 A.D. 2d 109, 600 N.Y.S. 2d 285 (3d Dept.
 27 1993) (Failure of hearing officer to allow inmate to review Video tape of
 28 incident in question

STATEMENT OF FACTS IN SUPPORT I (CONTINUED)

at disciplinary hearing denied inmate his Constitutional right to answer the evidence therefore, the record of the incident should be expunged. See; Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed 2d 935 (1974) (1) Hearing; (2) Impairment; (3) Evidence; (4) Witnesses et al.) See; Northern Nevada Association of Injured Workers v. Nevada State Indos. Insurance System (Nov. 1991) 807 P.2d 728, 107 Nev 108; Says: "State Agencies must follow their own Rules, Failure to follow a Non-Discretionary Rule Constitutes a Non-Discretionary Act." (see also; NRS 41.031 and 41.032, And 616.500 (2)).

Where NDOC AR, DP, IP say that something has to be done, i.e. Forced movements and/or Extractions must be video taped, The absence of a Video, (Because it wasn't taken or because it was "lost") (1) Violates a Non-Discretionary Policy; (2) Constitutes a Non-Discretionary Act (3) Constitutes Destruction of Evidence, (Spoliation).

See; Kimberly Bass-Davis v. Kateri Davis (Nov. 2006) 134 P.3d 103, 122 Nev. 442; Says: "Destruction of Evidence that is not willful still Evidence would have been unfavorable to the Destroyer" "Destruction Evidence that is willful warrants Jury Instruction for Presumption that difference between an inference and a presumption is that while the Jury "Must" accept a presumption as true it does not have to accept an inference as true." Where the destroyer destruction of evidence violates a written policy; said Destruction is deemed willful."

NRS 41.031 says that: "The state of Nevada, its Agencies, and their employees waive their immunity from being sued in State Court for Non-discretionary Acts" (see; also; NRS 41.032). Where law suit is Against a (NDOC) Employee, destruction of evidence by "any" officer (NDOC) is still held against lawsuit party under.

STATEMENT OF FACTS IN SUPPORT (CONTINUED)

the "Law of Agency." see; Defendants DEF EXH A-002 Witness Information. DM Devere #1010262 See; 5-1-15 Disciplinary for requesting Video. (FACT 2.) Plaintiff requested on PAGE 4 LINE 6-9 and LINE 11-12. (1.) Investigator General's Office reports 2 weeks after 3-28-15 interviewer Officer IG Mr Moore, for reports and Affidavits ect... pertaining to there results of Findings. He was denied this. Plaintiff needs this to show a jury that a investigation and reports were done and to plaintiff all those results. It's relevant. (2.) Plaintiff requested the Carson City Nev. Sheriff's Dept Reports and Findings to plaintiff's complaints to them on September 26, 2016 in detail about each Officers Assaults, Batteries, Attempt Murder, Obstruction of Justice, Perjury, outrages government conduct, Conspiracy to do so. He wants there Findings for a Jury and he included § 242 USC canker part to a § 1983 criminal prosecution. He also was willing to do a poly graph on this complaint with a attorney present. Both reports and Findings are relevant to this case.

II.

CONCLUSION

Wherefore, Plaintiff shows good cause why he needs and should be allowed Video Tape on 3-28-15 UNITS 4, 5, 7, 8 AT NINE BETWEEN 8PM and 930PM as said on this request brief, and those reports from Carson City Sheriff and IG Officer Moore results Findings, and what they did about it. Plaintiff fully complied to FRCP 37(a) with two letters and Admissions/Integations but the AG refuses to allow plaintiff this evidence, so plaintiff had to get court order and shows good cause why.

RESPECTFULLY this 26th day of April, 2017 -5- BY: Joseph M. Miron / Joseph Miron #68549

III. CASE # 3:15-CV-00499-MMD-WGC

AFFIDAVIT AND CERTIFYING THE TRUTH AND PERJURY

CONSULTATION AND SINCERE EFFORT WAS DONE TO

RESOLVE THE DISCOVERY ISSUES WITHOUT THE COURT RULE 37(a)(1).

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

(1) Plaintiff swears in support of the Motion submitted and that he did under rule 37(a)(1) try to get discovery "All" but was denied video/report by Agencies without the Courts interference and says;

(2) Plaintiff pro-se Joseph Mizzoni #68549 in support of this Motion

"MOTION SEEKING PERMISSION TO OBTAIN BY COURT ORDER

VIDEO TAPE EVIDENCE FOR THE NIGHT OF 3-28-15 IN/OUT

UNITS 5, 4, 8, 7. at NNCC PRISON UNDER LOCAL RULE 26-7(b) FOR

§1983 BETWEEN 8PM AND 9PM" and to Certify that plaintiff

did try to get his Discovery from the Attorney Generals Office

and was denied outside this Courts jurisdiction, on a REQUEST TO DEFENDANTS

FOR DISCOVERY CONFERENCE UNDER FRCP 37(a)(1) LETTER 1 and 2" IN THE

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA, on his

§1983 in truth under penalty of perjury §1746 USC and NRS LAWS.

RESPECTFULLY SUBMITTED AND CERTIFIED

This 26th, day of April 2017

BY: Joseph Mizzoni

#68549

JOSEPH MIZZONI

CERTIFICATE OF MAIL FOR U.S. CASE #3:15-CV-00499-MMD-WGC

I Joseph Mizzoni #68549 hereby certifies pursuant to 28 USC §1746 / MRS LAUR that on this 26th day of April 2017 I mailed a true correct copy of the foregoing "MOTION SEEKING PERMISSION TO OBTAIN BY COURT ORDER VIDEO TAP EVIDENCE FOR THE NIGHT OF 3-28-15 IN/CUT UNITS 5, 4, 8, 7 AT NVLC PRISON UNDER LOCAL RULE 26-7(b) FOR §1983 BETWEEN 8PM and 930PM." and by giving it to a prison guard/offical at High Desert State Prison Bress Slip # 1665938 sealed and postage prepaid, and addressed to:

(1) CLERK, US DISTRICT COURT
DISTRICT OF NEVADA
400 S. Virginia Street Room # 301
Reno, Nevada, 89501

(2) Office of Attorney Gen / NVL
MS. ERIN L. ALBRIGHT
100 N. CARSON STREET
CARSON CITY, NV. 89201-4717

(3) ADDRESS OF PLAINTIFF
JOSEPH MEZZONE #68549
H.O.S.P
PO Box 650
INDIAN SPRINGS, NV. 89400

BY: Joseph Mizzoni
Joseph Mizzoni
#68549